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**FEDERAL ELECTION COMMISSION**

999 E Street, N.W.  
Washington, D.C. 20463

**FIRST GENERAL COUNSEL'S REPORT**

AUDIT REFERRAL: 02-05  
DATE ACTIVATED: September 5, 2002

**SENSITIVE**

EXPIRATION OF STATUTE OF LIMITATIONS:  
April 2, 2004<sup>1</sup>

STAFF MEMBER: Daniel E. Pollner

**SOURCE:** AUDIT REFERRAL

**RESPONDENTS:** Committee to Re-elect Vito Fossella  
Anthony J. Maltese, Treasurer  
Nicholas Ponzio

**RELEVANT STATUTES AND REGULATIONS:** 2 U.S.C. § 431(8)  
2 U.S.C. § 438(b)  
2 U.S.C. § 441a(a)(1)(A)  
2 U.S.C. § 441a(f)  
  
11 C.F.R. § 100.7(a)(1)  
11 C.F.R. § 103.3(b)  
11 C.F.R. § 110.9(a)  
11 C.F.R. § 110.1(b)  
11 C.F.R. § 110.1(l)(5)  
11 C.F.R. § 110.1(k)

**INTERNAL REPORTS CHECKED:** Audit Documents  
Disclosure Reports

**FEDERAL AGENCIES CHECKED:** None

<sup>1</sup> The earliest apparent violation in this matter is an excessive contribution made on April 2, 1999. Therefore, the earliest date on which the five-year limitations period would expire with respect to an apparent violation in this matter is April 2, 2004. See 28 U.S.C. § 2462.

1 **I. GENERATION OF MATTER**

2 This matter was generated by an audit of Committee to Re-elect Vito Fossella  
3 ("Committee"), which was conducted by the Audit Division of the Federal Election  
4 Commission ("Commission") pursuant to 2 U.S.C. § 438(b). Attachment 1. The  
5 Committee is the principal campaign committee for Rep. Vito Fossella, Jr.  
6 ("Candidate").<sup>2</sup> According to its most recent Statement of Organization, which was filed  
7 on October 5, 2001, the Committee's current treasurer is Anthony J. Maltese.<sup>3</sup>

8 The Commission approved the final audit report in this matter on April 17, 2002  
9 and it was released to the public on April 26, 2002. Attachment 1 at 1. The audit, which  
10 covered the period from January 1, 1999 until December 31, 2000, revealed that the  
11 Committee had apparently accepted contributions in excess of the limitations set forth in  
12 the Federal Election Campaign Act of 1971, as amended ("Act"). *Id.* These apparent  
13 violations were referred to this Office on May 8, 2002 and are addressed in this First  
14 General Counsel's Report ("Report").<sup>4</sup> *Id.*

15 **II. THE LAW**

16 **A. Contribution Limitations**

17 Under the Act, no person may make contributions to any candidate and his  
18 authorized political committees with respect to any election for Federal office that, in the

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<sup>2</sup> The Committee initially registered with the Commission as the Candidate's principal campaign committee on June 18, 1997 under the name "Fossella for Congress." The Committee notified the Commission on June 29, 1998 that it was changing its name to "Committee to Re-elect Vito Fossella."

<sup>3</sup> According to Committee filings with the Commission, Mr. Maltese has been the Committee's treasurer since it first registered with the Commission on June 18, 1997.

<sup>4</sup> The Committee was a respondent in MUR 4850, in which the Commission has found probable cause to believe that the Committee violated the Act in 1997 and 1998 by accepting excessive contributions, failing to make timely deposits of contributions received, and failing to accurately report its outstanding debts. On October 18, 2002, the Commission accepted a conciliation agreement with the Committee and closed the file in MUR 4850. The conciliation agreement requires the Committee to pay a civil penalty of \$42,000.

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1 aggregate, exceed \$1,000. 2 U.S.C. § 441a(a)(1)(A); 11 C.F.R. § 110.1(b)(1). A  
2 contribution is defined in the Act as "any gift, subscription, loan, advance, or deposit of  
3 money or anything of value made by any person for the purpose of influencing any  
4 election for Federal office." 2 U.S.C. § 431(8); 11 C.F.R. § 100.7(a)(1). No political  
5 committee may accept any contribution in violation of the contribution limitations set  
6 forth in the Act. 2 U.S.C. § 441a(f); 11 C.F.R. § 110.9(a).

7 A contribution that is designated in writing by the contributor for a particular  
8 election is considered to be a contribution for that election. 11 C.F.R. § 110.1(b)(2)(i). A  
9 contribution that is not designated in writing by the contributor for a particular election is  
10 deemed to be a contribution for the next election for that Federal office after the  
11 contribution is made. 11 C.F.R. § 110.1(b)(2)(ii). A contribution is considered made  
12 when the contributor relinquishes control over the contribution by delivering it to the  
13 candidate, the political committee, or an agent of the committee. 11 C.F.R. § 110.1(b)(6).  
14 A contribution that is mailed is considered made on the date of the postmark. *Id.*

15 Any contribution made by more than one person, except for a contribution made  
16 by a partnership, shall include the signature of each contributor on the check, money  
17 order, or other negotiable instrument or in a separate writing. 11 C.F.R. § 110.1(k)(1). If  
18 a contribution made by more than one person does not indicate the amount to be  
19 attributed to each contributor, the contribution shall be attributed equally to each  
20 contributor. 11 C.F.R. § 110.1(k)(2).

21 The treasurer of a political committee is responsible for examining all  
22 contributions received for evidence of illegality and for ascertaining whether the  
23 contributions received, when aggregated with all other contributions from the same  
24 contributor, exceed the contribution limitations set forth in the Act. 2 U.S.C. § 103.3(b).

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A contribution that appears illegal, either on its face or when aggregated with other contributions from the same contributor, and which is deposited into a campaign depository, shall not be used for any disbursements until the contribution has been determined to be legal or has been properly reattributed to another contributor or redesignated to another election. 11 C.F.R. § 103.3(b)(4).

**B. Redesignation and Reattribution**

Contributions that exceed the limitations in the Act, either on their face or when aggregated with other contributions from the same contributor, may be either deposited into a campaign depository or refunded to the contributor. 11 C.F.R. § 103.3(b)(3). If any such contribution is deposited, the treasurer may seek reattribution of the excessive contribution to another contributor or redesignation of the excessive contribution for another election. *Id.* If reattribution or redesignation is not obtained within 60 days after the excessive contribution is received, the treasurer must refund the contribution. *Id.*

A contribution shall be considered to be redesignated for another election if: (1) the treasurer of the recipient political committee requests that the contributor provide a written redesignation of the contribution and informs the contributor that the contributor may request a refund of the contribution as an alternative to providing a written redesignation; and (2) within 60 days after the treasurer's receipt of the contribution, the contributor provides the treasurer with a written and signed redesignation of the contribution for another election. 11 C.F.R. § 110.1(b)(5)(ii).

A contribution shall be considered to be reattributed to another contributor if: (1) the treasurer of the recipient political committee asks the contributor whether the contribution is intended to be a joint contribution by more than one person and informs the contributor that he or she may request the return of the excessive portion of the

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1 contribution if it is not intended to be a joint contribution; and (2) within sixty days from  
2 the date of the treasurer's receipt of the contribution, the contributors provide the  
3 treasurer with a written reattribution of the contribution, which is signed by each  
4 contributor, and which indicates the amount to be attributed to each contributor if equal  
5 attribution is not intended. 11 C.F.R. § 110.1(k)(3)(ii).

6 If a political committee does not retain the written records concerning  
7 redesignation or reattribution, the redesignation or reattribution shall not be effective and  
8 the original designation or attribution shall control. 11 C.F.R. § 110.1(l)(5).<sup>5</sup>

9 **III. FACTUAL AND LEGAL ANALYSIS**

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<sup>5</sup> The Commission has issued a Final Rule amending the regulations governing the redesignation and reattribution of excessive contributions, effective January 1, 2003. See 67 FR 69,928 (Nov. 19, 2002). Under the new rules, political committees will be permitted to presumptively redesignate for another election in the same election cycle contributions that would otherwise be excessive without obtaining a signed, written redesignation from the contributor if: (1) the contribution was not designated in writing by the contributor for a particular election; and (2) within 60 days after the contribution is received, the committee notifies the contributor of the redesignation and offers a refund. *Id.* Moreover, under the proposed rules, political committees will be permitted to presumptively reattribute the excessive portion of a contribution to any one or more persons whose name is imprinted on the check or other written financial instrument without obtaining a written reattribution from the contributors so long as the committee, within 60 days, notifies all contributors of the reattribution and offers a refund. *Id.*

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In this matter,

Nicholas Ponzio contributed a total of \$3,000.<sup>8</sup>

Accordingly, this Office recommends that the Commission find reason to believe that Nicholas Ponzio violated 2 U.S.C. § 441a(a)(1)(A) and 11 C.F.R. § 110.1(b)(1). Given the relatively small amount of Mr. Ponzio's contribution, however, this Office recommends that the Commission exercise its prosecutorial discretion by taking no further action with respect to Mr. Ponzio despite the apparent violation.

<sup>8</sup> The applicable limit is \$1,000 per election. 2 U.S.C. § 441a(A)(1)(a). The Committee attempted to reattribute \$1,000 of Mr. Ponzio's contribution to another contributor but could not produce the required documentation. Thus, the Audit Division treated the entire \$3,000 as a contribution from Mr. Ponzio for the primary election. Under the new rules for presumptive redesignation, which are described above in Note 5, the Committee likely would have been able to presumptively redesignate \$1,000 of Mr. Ponzio's contribution for the 2000 general election without obtaining a written redesignation from Mr. Ponzio. However, since no other person's name is imprinted on the checks used by Mr. Ponzio to make these contributions, the Committee would not have been able to avail itself of the new rules for presumptive

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retribution. *See also* Note 5. Thus, even under the new rules for presumptive redesignation and retribution, \$1,000 of Mr. Ponzio's excessive contribution would remain non-curable.



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V. RECOMMENDATIONS

1. Open a MUR in AR 02-05.

3. Find reason to believe that Nicholas Ponzio violated 2 U.S.C. § 441a(a)(1)(A) and 11 C.F.R. § 110.1(b)(1), but take no further action as to Mr. Ponzio.

7. Approve the appropriate letters.

Lawrence H. Norton  
General Counsel

1/10/03  
Date

BY:   
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